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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Amendment of Section ) RM-8616  
73.606(b), Table of )  
Allotments, TV Broadcast ) MM Docket No. 95-77  
Stations )  
(Virginia Beach, Virginia) )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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COMMENTS OF CENTENNIAL COMMUNICATIONS, INC.

Centennial Communications, Inc. (Centennial), by its attorneys, now submits its comments in response to the Notice of Proposed Rule Making, DA 95-1215 (released June 9, 1995) (NPRM) issued in this proceeding.

Centennial is the licensee of television station WGNT, Channel 27, Portsmouth, Virginia, which is located in the same market as Virginia Beach, Virginia. Centennial urges the Commission to reject Lockwood Broadcasting, Inc.'s (Lockwood) proposal to allocate Channel 21 to Virginia Beach for two reasons. First, the allocation of Channel 21 would be a direct violation of the order freezing the TV Table of Allotments in the areas surrounding major television markets. The freeze serves the major public interest purpose of protecting scarce spectrum for advanced television. Second, Lockwood has failed to comply with Section 73.611(a)(4) of the Commission's rules because its proposed reference coordinates do not represent a viable transmitter site.

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On July 16, 1987, the Commission froze the TV Table of Allotments in areas surrounding the top thirty television markets. Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, 52 FR 28346 (published July 29, 1987) (Freeze Order). The purpose of the freeze was:

to preserve sufficient broadcast spectrum  
to insure reasonable options relating to  
spectrum issues for these new  
technologies.

Freeze Order, Para. 2. One of the cities covered by the freeze was Washington, DC. The freeze covered an area extending from the reference point for Washington out to the minimum co-channel separation distance for the channel involved. Freeze Order, n.2. Under Section 73.610(b) of the Commission's rules, the minimum co-channel separation for Channel 21 in Zone 1 is 248.6 kilometers (154.5 miles). In the Freeze Order, the Commission explicitly instructed, "No petitions to amend the table will be accepted for these areas [i.e. areas within the freeze zone]."

As demonstrated in the attached engineering statement of John J. Mullaney, the city of Virginia Beach is within the freeze zone because it is fewer than 154.5 miles from the reference coordinates for Washington, DC. See Mullaney Statement, P. 2 and Figure 2. Therefore, any proposed amendment to the Table of Allotments that proposed a

transmitter site in Virginia Beach would have to be summarily rejected as a violation of the Freeze Order.

In a transparent attempt to circumvent the Freeze Order, Lockwood proposed a reference point 15.5 miles southwest of Virginia Beach at coordinates 36-44-00 North Latitude, 76-13-00 West Longitude. In the NPRM, the Commission proposed a reference point at 36-48-38 North Latitude, 75-58-30 West Longitude. In fact, the Freeze Order does not allow the freeze to be circumvented by specifying a reference point outside the freeze zone when the community of license is inside the freeze zone. See Mullaney Statement, P. 2. The Freeze Order speaks of the TV Table of Allotments being frozen "in certain areas". Here, Lockwood is asking the Commission to amend the Table of Allotments for an area (i.e., community) inside the freeze zone. In Greater Utica-Rome TV Services, Inc., 7 FCC Rcd 2252 (1992), the Commission held (emphasis added):

It is uncontroverted that Utica is located within the area proscribed by our Freeze Order and, therefore, applications for that new allotment<sup>1</sup> cannot be accepted, absent a compelling showing that waiver of the freeze is warranted.

---

<sup>1</sup> The channel was allocated to Utica because the petition for rule making was filed before the Freeze Order was issued. 7 FCC Rcd at 2252. Here, on the other hand, the Freeze Order requires that the channel not be allocated because the petition was filed when the freeze was in effect.

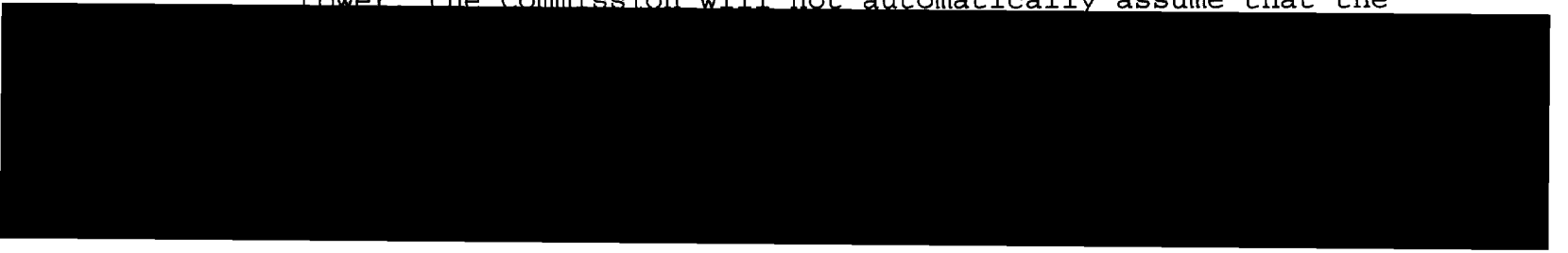
The key factor in that case was the location of the community of license, not the reference point. Here, as in Greater Utica-Rome, the community of license is within the freeze zone. Accordingly, it would violate the freeze to add a channel for a community inside the freeze zone.

If the Commission allotted Channel 21 to Virginia Beach, the Freeze Order would provide no protection in areas inside but near the edge of a freeze zone. As Mr. Mullaney explains in his statement (at P. 4), the Commission has accepted applications specifying transmitter sites inside the freeze zone so long as the reference point of the allocation is outside the freeze zone. If the Commission allotted Channel 21 to Virginia Beach, an applicant could get a channel allocated to a community inside the freeze zone and specify a transmitter site up to ninety kilometers (over fifty-five miles) inside the freeze zone so long as it could find a hypothetical reference point outside the freeze zone. Potential applicants would then be free to circumvent the freeze by finding an imaginary reference point that had nothing to do with their proposed operation and which could be thirty miles from their actual transmitter site. The Freeze Order would then be meaningless. The Commission should reject any interpretation of the Freeze Order which failed to provide the protection the Commission sought and which reduced the order to a nullity. Accordingly, Lockwood's proposal must be rejected.

Even if the Commission allows Lockwood to propose to serve a community inside the freeze zone, the Commission must reject the proposal because it does not comply with Section 73.611(a)(4) of the Commission's rules. That rule provides:

(4) Where the distance between the reference point in a community to which a channel is proposed to be assigned and the reference point in another community does not meet the minimum separation requirements of Sec. 73.610, the channel may be assigned to such community upon a showing that a transmitter site is available that would meet the minimum separation requirements of Sec. 73.610 and the minimum field strength requirements of Sec. 73.685...

In this case, Lockwood has offered the Commission a hypothetical site. The site does not comply with the separation requirements imposed by the Freeze Order, so Lockwood must comply with Section 73.611(a)(4). A close examination of the site demonstrates, however, that Lockwood cannot show that its hypothetical site would be available for use as a transmitter site. If a question is raised as to whether a petitioner's hypothetical site is consistent with aeronautical and environmental requirements, the Commission must make a judgment as to whether those requirements can be complied with. Vero Beach, Florida, 4 FCC Rcd 2184, 2185 (1989). When an applicant proposes the construction of a tall tower, the Commission will not automatically assume that the



approvals needed to build that tower. Anniston, Alabama, 6 FCC Rcd 1992, 1993 (1991).

In this case, there are specific reasons to question whether the hypothetical site described by Lockwood and the reference coordinates proposed by the Commission would ever be available for use as a transmitter site. First, Lockwood has made no showing that it could work out an arrangement with the owners of the site. Second, both sites are located within six nautical miles of airports. The proximity of those sites to airports means that the FAA will most likely impose serious limitations on any tower at those locations. Mullaney Statement, P. 3. Section 73.611(a)(4) of the Commission's rules places the burden on Lockwood to prove that the site in question is available. It has made no showing that the FAA would approve a tower at either site despite the proximity of the sites to airports.

In Anniston, Alabama, supra, one of the bases for refusing to allocate a channel to Anniston was the petitioner's failure to make the showing required by Section 73.611(a)(4) of the Commission's rules. The applicant failed to show that it could receive FAA approval for the tall tower it was proposing to build. Here, the proximity of the sites to airports raises serious questions as to whether FAA approval would be forthcoming for a tower on either Lockwood's hypothetical site or the Commission's reference coordinates.

Lockwood's failure to address those questions requires the denial of its proposal.

Accordingly, Centennial asks the Commission to deny Lockwood's request to allocate Channel 21 to Virginia Beach, Virginia.

Respectfully submitted,

**CENTENNIAL COMMUNICATIONS, INC.**

By John J. Schauble  
John J. Schauble

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Its Attorneys

Date: July 31, 1995

JOHN J. MULLANEY  
JOHN H. MULLANEY, P.E. (1994)  
R. MORGAN BURROW, JR., P.E.

**MULLANEY ENGINEERING, INC.**

9049 SHADY GROVE COURT  
GAITHERSBURG, MD 20877

301 921-0115

**ENGINEERING EXHIBIT EE:**

**COMMENTS IN OPPOSITION OF  
ALLOTMENT OF UHF TV CHANNEL 21  
TO VIRGINIA BEACH VIRGINIA  
MM DOCKET 95-77**

**JULY 31, 1995**

**ORIGINAL  
SIGNATURE**

**Prepared On Behalf Of  
Centennial Communications, Inc.**



**MULLANEY ENGINEERING, INC.**

**ENGINEERING EXHIBIT EE:**

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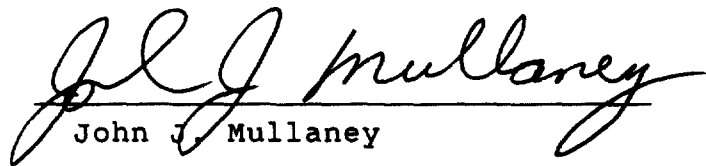
1. Declaration of Engineer
2. Narrative Statement.
3. Figure 1, Distances From Washington, DC.
4. Figure 2, Map Showing Washington, DC, HDTV Freeze Zone.

**MULLANEY ENGINEERING, INC.**

**DECLARATION**

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an engineer in the firm of Mullaney Engineering, Inc., and that firm has been retained by Centennial Communications, Inc., to prepare an opposition to a new UHF TV Allotment.

All facts contained herein are true of his own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

  
John J. Mullaney

Executed on the 31st day of July 1995.

**MULLANEY ENGINEERING, INC.**

**ENGINEERING EXHIBIT EE:**

**COMMENTS IN OPPOSITION OF  
ALLOTMENT OF UHF TV CHANNEL 21  
TO VIRGINIA BEACH VIRGINIA  
MM DOCKET 95-77**

**NARRATIVE STATEMENT:**

**I. GENERAL:**

This engineering statement has been prepared on behalf of Centennial Communications, Inc. The purpose of this statement is to support an opposition to the allotment of a New UHF TV Channel to Virginia Beach, Virginia (MM Docket 95-77). The city of Virginia Beach is subject to the HDTV freeze and a special exception is not warranted since it could adversely effect the ability to find the necessary number of additional channels required by existing stations for HDTV broadcasts.

**II. ENGINEERING DISCUSSION:**

**A. HDTV Freeze:**

On July 16, 1987, the Commission issued an order in which it froze the TV Table of Allotments for new assignments near the top thirty television markets. The radius for which the freeze would be applied is the co-channel TV separation requirements as specified in Section 73.610(b).

Inasmuch as Washington, DC, is located in Zone I the freeze on new UHF TV Allotments extends for a radius of

248.6 km (154.5 miles) from Washington, DC.

It should be understood that the freeze order does not effect the "modification" of existing facilities (including an unbuilt CP) notwithstanding the location of their city of license. In other words, even existing stations located in one of the top thirty markets are permitted to change site and/or modify their ERP/HAAT. However, no applications will be accepted for existing vacant allotments and which are located within the area subject to the freeze. In addition, no petitions to amend the table of allotments will be accepted for cities within areas subject to the freeze.

It should also be understood that applications for vacant allotments for cities located outside the area subject to the freeze have no limitations on site selection due to the freeze. In other words, limitations imposed by the freeze are a "go / no-go" test which is strictly applied to the city of license (allotment) and has nothing to do with the specific site proposed by any applicant.

**B. Proposed Allotment:**

MM Docket 95-77 proposes the allotment of a new UHF TV Channel to Virginia Beach, Virginia. However, as demonstrated by Figure 1, the city of Virginia Beach is just 245.13 km (152.32 miles) from Washington, DC. Consequently, the freeze order prohibits the allotment of a new UHF TV channel to this city because it is less than 248.6 km from Washington, DC.

Figure 1 also shows the distance to the special reference coordinates as proposed by the NPRM and as proposed by

the proponent in its rule making. The site proposed in the NPRM exceeds the freeze radius by only 0.23 km (0.14 miles) and the site proposed in the RM exceeds the freeze radius by only 1.5 km (0.93 miles).

Figure 2 is a map illustrating these three points and their relative location to the freeze radius imposed around Washington, DC. In addition, it shows the closest spacing limitation to protect other TV stations as required by the rules (there is only one such limitation within 55 km). The map also includes a 6 nautical mile preclusion area off the runways of three separate airports located near the edge of the freeze area. It should be noted that both of the special reference coordinates are within this aeronautical preclusion area and, thus will most likely have significant limitations imposed by the FAA.

It is obvious that the purpose of using the special reference point in this instance is strictly for the purpose of circumventing an order adopted by the full Commission. Traditionally, the use of a special reference point in TV allotments was strictly used to avoid a short spacing. However, as illustrated in Figure 2, no such special reference point is needed for downtown Virginia Beach to meet the spacing requirements contained in the rules.

**C. Impact of Proposed Exception:**

One might argue that use of a special reference point is justified given the fact that the city of Virginia Beach is just 3.5 km or 1.4 percent short of the full distance. However, once an exception is made, no matter how minor it seems now, where will it stop.

Remember, that Washington, DC, is not only located in the top thirty television markets, it is located in the top ten television markets. Consequently, an exception in this case could make the task of finding a second TV channel (used for HDTV broadcasts) for each of the existing TV stations very difficult.

In addition, it should be remembered that while the distance that the city fails to meet the freeze criteria is relatively small this time, it may not be so small the next time. Theoretically, a special reference point could be used for any location that will provide the required city grade service. Even with very modest assumptions on the proposed ERP & HAAT it is possible to use special reference points located 32 km (20 miles) to 48 km (30 miles) away. Consequently, while admittedly a minor exception this time, it will open up the door to potentially many other exceptions which are much larger.

It should also be remembered that that use of a special reference point in lieu of the traditional city coordinates does nothing to protect the viability of HDTV in the top thirty television markets as intended by the freeze order. The freeze is only applied to the allotment point or in this case the special reference point and does not limit the selection of a specific site proposed in an application. Consequently, any city located within 48 km of meeting the freeze radius could qualify for an exception. In addition, given the lack of any restriction on actual site selection this means that the site could actually be located 90 kilometers inside the freeze radius. If this is to be the policy, then it would be better to completely do away with the freeze.

**III. SUMMARY:**

Centennial Communications, Inc., opposes the proposed allotment of a New UHF TV Channel to Virginia Beach, VA (MM Docket 95-77). The city of Virginia Beach is subject to the HDTV freeze and a special exception is not warranted since it could adversely effect the ability to find the necessary number of additional channels required by existing stations for HDTV broadcasts.

July 31, 1995.

  
John J. Mullaney

**MULLANEY ENGINEERING, INC.**

**FIGURE 1**  
**DISTANCE FROM WASHINGTON, DC**

**Washington, DC**

**REFERENCE      LAT : 38-53-51.0**  
**LON : 77-00-33.0**

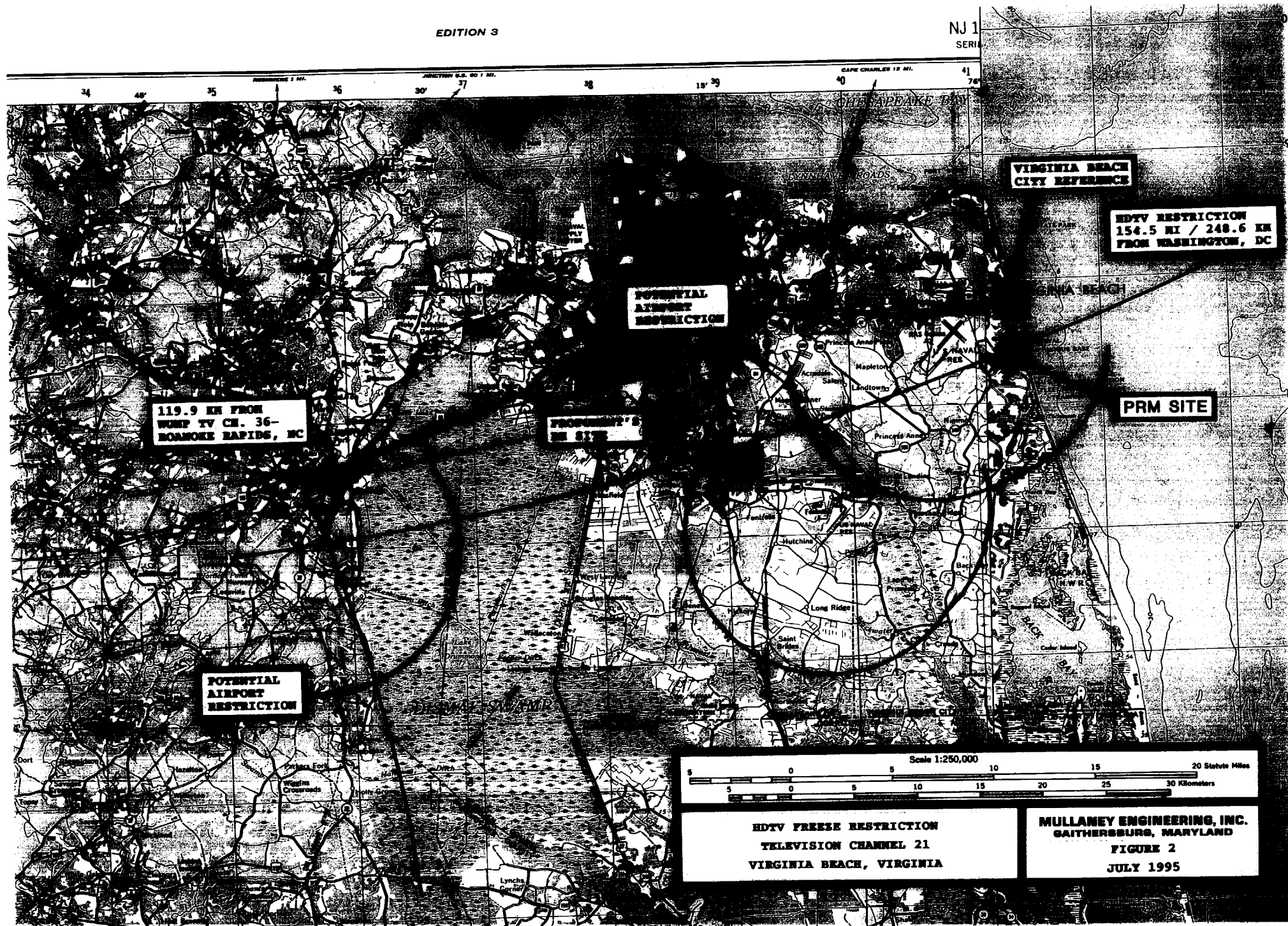
	<b>NAME / LOCATION</b>	<b>LATITUDE LONGITUDE</b>	<b>BEARING FROM REF. TO REF.</b>	<b>DISTANCE MI./KM.</b>
	*****	*****	*****	*****
1	Virginia Beach City Reference	36-50-48.0 75-58-30.0	157.98 338.61	152.32 245.13
2	FCC Proposed Reference Ch. 21	36-48-38.0 75-58-30.0	158.31 338.95	154.64 248.87
3	Proponents RM Site - Ch. 21	36-44-00.0 76-13-00.0	163.62 344.11	155.43 250.13

**FCC HDTV Freeze prohibits new UHF TV allotments  
within a radius of 248.6 km (154.5 miles) in Zone 1.**



EDITION 3

NJ 1  
SERIAL



HDTV FREEZE RESTRICTION  
TELEVISION CHANNEL 21  
VIRGINIA BEACH, VIRGINIA

MULLANEY ENGINEERING, INC.  
SAITHERSBURG, MARYLAND  
FIGURE 2  
JULY 1995

**CERTIFICATE OF SERVICE**

I, Lee Petro, a law clerk employed by Bechtel & Cole, Chartered, do hereby certify that on the 31st day of July 1995, a copy of the foregoing "Comments of Centennial Communications, Inc." was sent first-class mail, postage prepaid to the following:

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